उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(18)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.779/2004

APPELLANT (In Jail) — Bahoran Sahu @ Sendhu, S/o Rakbar Sahu, aged about 60 years, P.S. Kawardha, District Kawardha (C.G.).

Vs

RESPONDENT — State of Chhattisgarh

Present:

Mrs. Hamida Siddique, Advocate for the appellant.

Mr. G.K. Beriwal, Dy. Adv. General for the respondent-State.

ORAL JUDGMENT

(30th August, 2007)

Per Dhirendra Mishra, J:

Heard.

This appeal under Section 374 (2) of Cr.P.C. is directed against the judgment of conviction and order of sentence dated 27th July, 2004 passed in Sessions Trial No.17/04 whereby learned Additional Sessions Judge (FTC), Kawardha has convicted the appellant under Section 307 of the IPC and sentenced him to undergo R.I. for 7 years and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 6 months.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(19)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The case of the prosecution, in brief, is that on 6.10.2003 at about 7-10 a.m. complainant Agahan Bai along with her daughter-in-law Reena Bai was returning from Kawardha to Village Barkohi after witnessing Dashhera, when they reached near Jangal Khar canal, the appellant assaulted Agahan Bai with an axe over her head, as a result of which Agahan Bai became unconscious and fell down on the ground. Thereafter, the appellant fled from there. Reena and her sister Lalita narrated the incident to their father Gokaran, Sadhram and other villagers. The complainant was taken to the Government Hospital, Kawardha where Dr. K.K. Sharma examined her and also gave information to the Police Station Kawardha, which was recorded in Roznamchasanha on 6.10.2003 at 10.45 hrs. On X-ray, fracture was found on the skull of Agahan Bai. The doctor opined that injury was grievous in nature and the patient could die in the absence of treatment. Injuries could be caused by axe seized from the accused on this basis of memorandum given by the accused. The victim was referred to the Medical College Hospital, Raipur, where she was further referred to Bombay for treatment, however, Agahan Bai expressed her inability in going to Bombay for treatment.

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मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Kawardha and after committal the same was received on transfer for trial by learned Additional Sessions Judge. The prosecution examined 10 witnesses in all during trial, thereafter the statement of accused was recorded under Section 313 of Cr.P.C. and after hearing learned counsel for the respective parties, learned Additional Sessions Judge has convicted and sentenced the appellant as mentioned herein above.

Dr. I.S. Thakur (PW-10), who had examined the complainant and gave his report of Ex.P-16, had noticed one incised wound on the left side of forehead of size 5cm x 2cm, injury was bleeding and another incised wound of size 5cm x 1.5cm on the left parietal region, fresh blood was present. On x-ray examination, bone of left side of the head was found fractured. X-ray report is Ex.P-17. The doctor has opined that injuries were grievous in nature and the patient could die in the absence of treatment. Injuries were caused by some sharp edged weapon and the same could be caused by axe seized from the accused, which was sent for examination to the doctor.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Learned counsel for the appellant submits that there is no evidence available on record that the appellant inflicted injuries with an intention to cause death of Agahan Bai, as the complainant did not make any allegation that the appellant assaulted her with an intention to cause her death. The offence was initially registered under Sections 324 & 506-B of the IPC and therefore, in the absence of any evidence that the injuries were inflicted with an intention to cause death of Aghan Bai, the conviction of the appellant under Section 307 of the IPC cannot be sustained. She further submits that the victim became speechless after the incident, as she was not provided proper treatment, as advised by the doctor, and therefore she is not able to state the reasons for the assault. Eyewitness Reena Bai (PW-3) has stated that only one injury was inflicted to her grandmother by the appellant from the back side of the axe as a result of which she fell down on the ground and there were big boulders near the place of incident.

On the other hand, learned Panel Lawyer for the State supported the impugned judgment.

I have heard learned counsel for the parties.

PW-4 Sadhram is the son of Agahan Bai. This witness has stated that his daughter Lalita and Reena had gone to witness

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Dashhera with his mother Agahan Bai. They returned at about 8.00 a.m. and told him that accused has assaulted Agahan Bai near the canal, as a result she is lying there, whereupon, he went to the place of incident, brought his mother and took her to Kawardha hospital. He has further stated that Agahan Bai was able to speak, however, after the incident she was not able to speak.

PW-1-Agahan Bai is the victim. The trial court has recorded an observation that the victim is unable to speak completely, however, she answers the questions by speaking 'yes' & 'no' and on the basis of this observation her statement has been recorded in question & answer form. This witness pointing towards the accused has stated that he assaulted on her both legs near knees, both her hands and right side of head and the assault was inflicted on her by an axe, as the accused assaulted on her by axe over her head, both legs and hands. She has denied that the injuries were inflicted from the back side of the axe or with club. She insists that injuries were inflicted by the axe. She denies the suggestion that accused did not assault her.

PW-3 Reena, who is an eyewitness of the incident and grand-daughter of the complainant, has stated that accused is her grand-father, whereas, Agahan Bai is her grand-mother. She had

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

gone to Kawardha to witness Dashhera, they were returning from Kawardha on foot to Village Barkohi, when they reached near Jangal Khar canal, the accused came from behind and assaulted over the head of her grand mother by the back of axe. They were separated by her aunt namely Nand Kunwar Bai. She has further stated that she narrated the incident to her mother, father Gokaran, her uncle Sadhram and also to other villagers. In the cross-examination this witness has admitted that on the place of incident there were big boulders and after the assault, Agahan Bai fell on the boulders.

Peruram (PW-2) & Bhanwar Singh (PW-6) are the witnesses of memorandum statement (Ex.P-1) of the appellant on the basis of which the seizure (Ex.P-2) of axe was affected. However, Peruram (PW-2) turned hostile and he has denied that any memorandum or seizure of axe was affected on the basis of the memorandum of the accused, though he has admitted his signatures on Ex.P-1 & Ex.P-2 being memorandum and seizure, whereas, Bhanwar Singh (PW-6) has proved the memorandum & seizure.

So far as the submission of learned counsel for the appellant that there is no evidence available on record that the

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

assault was made by the appellant with an intention to cause death of Agahan Bai is concerned, from the perusal of the injury report of Ex.P-16 as also X-ray report of the skull (Ex.P-17) wherein fracture in the skull bone has been found and which has been proved by Dr. I.S. Thakur (PW-10), it is clear that the assault was made by an axe on a vital part of the body i.e. head of the victim as a result of which she sustained two incised injuries and one fracture in the skull. The trial court has rightly inferred that the intention of the appellant was to cause death of Agahan Bai and argument in this regard of learned counsel for the appellant cannot be sustained.

Statement of the victim Agahan Bai is duly corroborated by the statement of Reena Bai (PW-3), which is further corroborated by the F.I.R. of Ex.P-7, which has been registered on the basis of information given by Reena Bai (PW-3). So far as the discrepancy in the statement of Reena Bai (PW-3) regarding portion of the axe used for the purpose of assault is concerned, looking to the age of Reena Bai, her version regarding assault by the appellant cannot be disbelieved solely on the basis of above discrepancy particularly when in the FIR name of the accused has been mentioned as the assailant and victim herself has deposed before

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मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the court and pointed towards the appellant as the person who assaulted over her head.

On the basis of above analysis, this Court is of the considered opinion the prosecution has been able to prove the case against the appellant beyond reasonable doubt and the court below has not committed any irregularly or illegality in convicting and sentencing the appellant under Section 307 of the IPC.

In the result, the appeal has no substance, the same is liable to be dismissed and it is hereby dismissed.

Sd/-
DHIRENDRA MISHRA
Judge

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